Other TCG White Papers:

(Titles cited in the text are in boldface.)

- **Model Regulatory Procedures for the Enforcement of Interconnection Agreements (November 1997)**
- **Model Performance Parity Measures for Facilities-Based Competition (November 1997)**
- **The Performance Parity Principle (July 1997)**
- **Clearing the Road:** ***The 1996 Telecommunications Act and Carrier Access to the Public Rights-of-Way*** **(July 1997)**
- Universal Service Assurance: *Act Three of a Four Act Play* (April 1997)
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THE PERFORMANCE PARITY PRINCIPLE

July 1997

TCG

Teleport Communications Group

THE ACT DEFINES PERFORMANCE PARITY

The single most important principle that assures the national goal of competitive local telecommunications markets is found in Section 251(c)(2) of the Telecommunications Act of 1934 as amended: *the principle of performance parity.* Section 251(c)(2)(C) imposes upon incumbent local exchange carriers (ILECs),

> "The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network...that is **at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection."**

The Act also invokes the performance parity principle with respect to the common "platform" facilities that ILECs must provide to their competitors. Section 251(c)(3) additionally imposes on ILECs,

> "The duty to provide, to any requesting telecommunications carrier for the provision of telecommunications service, **nondiscriminatory access to network elements on an unbundled basis**... ."

Since facilities-based competition is the only form of competition that assures consumers a physical alternative to the ILEC, interconnection which satisfies the performance parity principle is the key to real consumer choice.

The performance parity principle reflects the fact that ILECs have little if any incentive to treat rival interconnecting telecommunications service providers in a fair or nondiscriminatory fashion, but that they must do so if competition is to yield seamless interoperability in a "network of networks." The performance parity principle recognizes that incumbent local exchange carriers, who still serve nearly 100 percent of the consumers in the United States, can degrade the service quality of their new rivals or raise the rivals' cost of interconnection. The performance parity principle recognizes, too, that if the ILECs are allowed to treat interconnecting carriers as second-class citizens, facilities-based competition will be retarded. Since

facilities-based competition is the only form of competition that assures consumers a physical alternative to the ILEC, interconnection which satisfies the performance parity principle is the key to real consumer choice.

Because even facilities-based competitive local exchange carriers (CLECs) need to use some elements of the ILECs' networks in order to provide service, the performance parity principle applies also to ILECs' provision of unbundled network elements. The Federal Communications Commission's rules establish that "nondiscriminatory" access with respect to unbundled network elements means access that is, in fact, "at least equal".[1] Again, the Act and the rule recognize the plain fact that the ILEC can materially affect the service quality experienced by the CLEC's customers, if the rival needs any ILEC facilities to provide service. If the ILEC fails to promptly provision an unbundled loop, for example, it is the CLEC's reputation, not the ILEC's reputation, that will be harmed. The performance parity principle in effect establishes a statutory requirement for performance benchmarks that "operationalize" the concept of performance parity.[2] The Act created a remarkably efficient regulatory tool in this regard, for the requirement is clear, the determination of whether or not it has been met is "binary", and enforcement of the requirement will preclude exhausting and drawn out complaint procedures.

"Nondiscriminatory" access with respect to unbundled network elements means access that is, in fact, "at least equal".

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[1] 47 C.F.R.§ 51.311 (b).

[2] The Department of Justice, in its evaluation of SBC's application for interLATA authority in Oklahoma, adopted the phrases "performance benchmarks" to indicate what must be evaluated to determine whether a BOC had met its obligations and "performance measures" to describe how the evaluation is accomplished. *Evaluation of the Department of Justice, In re Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In Region, InterLATA Service in Oklahoma*, CC Docket No. 97-121 (May 16, 1997). TCG adopts the language of the DoJ except when referring to existing documents such as interconnection agreements. TCG fully endorses the DoJ approach.

STATUTORY REQUIREMENTS VS. CONTRACT REQUIREMENTS

It is important to distinguish, however, between the statutory requirement and the concrete performance standards set forth in many interconnection agreements between CLECs and ILECs. The latter are contractual obligations and the penalty for failure to meet them is normal contract damages, either as specified in the contract or established by a court or the state regulatory agency. Failure to meet the performance parity requirement of the Act, on the other hand, could result in a host of negative outcomes for the ILEC, ranging from fines to lawsuits.[3]

Failure to provide performance parity must result in denial of BOC interLATA authority.

For a Bell operating company (BOC), failure to provide performance parity must result in denial of authority to enter the interLATA market. Specifically, in connection with the evaluation of a BOC's application to enter the long distance business, both the regulatory agency in the relevant state and the FCC must find that the BOC has provided interconnection and unbundled elements in accordance with Section 251(c)(2) and (c)(3).[4] The performance parity principle applies to every item in the 14-point "competitive checklist" the BOCs must satisfy before they can enter the long distance market.[5] But all ILECs, not just BOCs, always will be accountable for **performance parity** under Section 251 of the Act. Thus **all** ILECs must be in a position to show that they have provided service or functionalities to CLECs on par with the equivalent service or functionalities that they provide to themselves.

"YES" OR "NO" PARITY

The ILEC's showing must result in a "yes" or "no" answer. The ILEC has either met its statutory obligations or it has not. The Act does not allow for "almost" met or "conditionally" met. To get the right answer, CLECs and regulators must be able to

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3 For example, Iowa has fined US West for failing to implement its interconnection agreements and ELI has filed an antitrust suit against US West.

4 47 U.S.C. §271(c)(2)(B)(i) and (ii).

5 Sections 271(c)(2)(B)(i) and 271(c)(2)(B)(ii) incorporate the performance parity requirements embodied in sections 251(c)(2) and 251(c)(3).

see quantitative data, or **performance measures.** A comparison of data sets, one reflecting the ILEC's performance for itself, and others reflecting the ILEC's performance for each other entity with which it interconnects, will quickly reveal whether the performance parity principle has been satisfied.[6] A simple bar graph will often suffice. Regulators can scan the results and literally "check off" the conclusion: "yes" the ILEC has provided "at least equal" service to the CLEC, or "no", it has not. The proper reporting requirements will make regulatory oversight simple and allow "swift justice" if the ILEC has failed to meet the requirement.[7]

Statistical validity must be assured.

Since the data sets will represent very different quantities for the ILEC and each CLEC, statistical validity must be assured. While not proposing particular statistical tests here, we will emphasize a few key principles. First, reports must be made monthly, and analysis must cover a significant period of time -- not just one month -- to ensure that the results reflect the ILEC's systemic performance, not a fluke or a temporary "brute forced" result. In the monthly reporting of performance, the ILECs should report both current monthly results and a three-month moving average of performance. For each benchmark being measured, for each carrier or customer, a comparison of the mean level of achievement for each entity can be made. The mean performance and the standard deviation from the mean should be reported to permit analysis of the variance between levels of achievement for different groups. Variances must be analyzed, because a CLEC does not receive service that is "at least equal" if the statistic reported for ILEC service to the CLEC varies more from the mean than the statistic reported by the ILEC for service to its own retail customers.

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6 At a minimum, reports should cover: the ILEC's service to itself, its affiliates, the four largest interexchange carriers (IXCs), its ten largest commercial clients, and each CLEC with which it interconnects.

7 A process must be established to allow CLECs to place a bona fide request for performance measurements -- allowing CLECs to police ILECs.

Parity is a moving benchmark.

The statutory language and the Commission's interpretation indicate that parity is a moving benchmark that the Commission cannot and should not attempt to pinpoint. Benchmarks will change over time based on two factors: evolving technology and improvements in response to competitive pressures. Rigid measurement requirements would be contrary to the statute, because they would freeze in place ILEC practices and would require CLECs repeatedly to request rule changes merely to ensure enforcement of the statutory performance parity principle.[8]

An illustrative list of performance benchmarks is appended to this paper.[9] But the burden of developing the appropriate quantitative measures assuring "apples-to-apples" comparison rests with the ILEC. The ILEC must not be permitted to escape its statutory duty based on its assertion that it does not perform a particular function for itself at all, and therefore no comparative performance measure is available. Rather, for these limited cases (if any), the ILEC must create internal performance benchmarks that approximate the benchmarks for the function the CLEC needs, and permits a direct "apples to apples" comparison. If it cannot do so, it is in violation of the Act.

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[8] The idea of parity as a moving benchmark is precisely the concept endorsed by the Department of Justice ("DoJ") and explained in the accompanying affidavit sponsored by Michael J. Friduss concerning the DoJ evaluation of the SBC-Oklahoma Section 271 application.

[9] This illustrative list is not definitive nor all-inclusive. Rather, it is a beginning point from which further performance benchmarks should be developed, refined, and then continually updated.

The automated systems of the ILEC create the objective data needed to compare performance measures. For example, ILECs have automated data acquisition systems that count minutes and report on them in various ways. One output of the data acquisition systems (DAS) is Trunk Servicing Reports.[10] The ILECs can use these reports and the database to show whether blocking of traffic to or from a CLEC exceeds the blocking rate of the ILEC's own traffic within the ILEC's own network. Other measures are available for reporting installation intervals on loops, reporting performance on failure rates and mean time to repair and other variables. (See appendix.)

Data from OSS are a means of achieving performance parity, not the end itself.

When ILEC operational support systems (OSS) are fully operational to provide support to CLECs, performance measures can be a system byproduct. But it must be clear that data from OSS are a **means** of achieving performance parity, not the end itself. It is the **outcome of performance parity** that is required by law and is important to competition, not the means by which the results are obtained. (Actually an ILEC may choose to assemble its performance measures manually or electronically, and it may choose to interface with CLECs manually or electronically; but either way, it must provide performance parity. If it chooses to serve itself electronically and serve competitors manually, then the result of the manual performance must be "at least equal" to the electronic performance.)

Policy makers must not lose sight of the objective -- **attainment and maintenance of performance parity** -- when they perceive the existence of a robust, tested and accepted OSS for interconnection of facilities-based carriers (not just for resale of ILEC services or unbundled network elements). Even though such OSS would appear to support a presumption that an ILEC has the capability and the will to provide

[10] These systems include Trunk Service System (TSS), Total Network Data System (TNDS) and Engineering and Data Acquisition System (EADAS).

performance parity for each category of service and functionality, the ILEC must actually show it has done so. The reason for this requirement is elementary: there are many instances where electronic bonding now exists and CLECs receive terrible service, far below the level of service the ILEC gives itself. Between electronic interfaces -- a means -- and performance parity -- the end -- lie many opportunities for ILEC personnel to disrupt schedules, appear at the wrong location, misread a symbol, or otherwise impair the quality of service experienced by CLECs.

ILEC wholesale and retail units, structurally separated, might well bolster a presumption that the parity principle has been met.

To facilitate the provision of performance measures, an ILEC may well find it expedient to restructure itself into wholesale and retail units. Especially if such units are structurally separated, the corporate structure would support objective quantitative reporting of ILEC - to - ILEC and ILEC - to - CLEC performance. In fact, such a structure might well bolster a presumption that even absent a track record showing the performance parity principle has been met, the ILEC has the capability and the will to measure compliance with the performance parity principle for all performance benchmarks. Regulators would have greater assurance that they could trace any source of failure to comply with the performance parity principle if an ILEC retail affiliate were seeking the same levels of service quality as CLECs. Nevertheless, even with separate wholesale and retail affiliates, the full array of performance measures must show the performance parity principle has been met.

Performance Parity is the foundation for Deregulation

The performance parity principle is not only the *sine qua non* of effective competition, it is also the foundation for deregulation of ILECs. The goal of the Act is competition, and when sufficient competition exists, there is no need for economic (price) regulation. When all performance measures of an ILEC are checked "yes" for performance parity, competition is likely to be well established and economic regulation of that ILEC may no longer be necessary in the public interest.

All parties stand to benefit immediately from satisfaction of the performance parity principle.

All parties stand to benefit immediately from satisfaction of the performance parity principle. The ILECs benefit because they will not be subject to repeated complaints, and can avoid lawsuits. The BOCs seeking to enter the interLATA market benefit additionally because they will satisfy the 14-point competitive checklist easily and swiftly. Regulators benefit from being able to expedite review of interLATA entry applications from BOCs, and will have to review fewer complaints from CLECs regarding ILEC violation of interconnection agreements. Instead of lengthy complaint proceedings that waste resources, swift justice can be rendered based on simple, objective numbers and graphs. CLECs benefit from good service. Consumers benefit from improved service obtained more quickly from new entrants, and from the cost savings all service providers will realize when lengthy, costly regulatory or legal action is precluded. Everyone benefits if competition becomes sufficiently robust so that no economic regulation is needed at all.

If you have questions or comments, please contact Gail Garfield-Schwartz at (718) 355-2892. e-mail: schwartz@tcg.com

Appendix

Illustrative Minimum Performance Measurements

ORDER PROVISIONING PERFORMANCE MEASUREMENTS

1. **FOC Response Time of ILEC** -- The number of days between the date that an order is submitted and ILEC establishment of a FOC (firm order commitment) for the order. A FOC sets an ILEC committed due date for the installation service order. This date is sometimes referred to as the "CCDD date". The original requested due date is referred to as "CDDD date".
2. **Scheduled Install or Turn-Up Interval** -- The number of days between the date that an order is received and the date that the order is due to be performed. This performance category measures the average *scheduled* time-frame for completion of installations or turn-ups, rather than the *actual* time-frame.
3. **Percent CCDD on Time** -- The total number of service orders that were completed on the ILEC's committed date divided by the total number of service orders. This measurement does not distinguish between original FOC dates and rescheduled FOC dates.
4. **Percent CDDD on Time** -- The total number of service orders that were completed on the CLEC's requested date divided by the total number of service orders.
5. **Mean Install Time (Actual)** -- The mean average of the total number of days that the ILEC *actually* took to process installation orders during the reporting period.
6. **Standard Deviation of Mean Install Time (Actual)** -- The standard deviation of the mean average of the total number of days that the ILEC *actually* took to process installation orders during the reporting period.

ONGOING SERVICE PERFORMANCE MEASUREMENTS

1. **Number of Failures** -- The total number of trouble reports for which the source of the trouble was determined to be the ILEC's service problem.
2. **Percent Failure Rate** -- The total number of failures divided by the total number of relevant events -- e.g., circuit turn-ups, NXX code activations or collocations -- which the ILEC provides.

3. **Percent Availability** – Percentage of time that the ordered circuits are available. To determine this percentage, the ILEC-provider should do the following:
   - ▸ Multiply the total number of circuits by the total hours in the report period to establish the total hours of service availability for the report period.
   - ▸ Add all of the measurable time (hours and minutes) for only the Network Reports to establish the total non service availability hours for the report period.
   - ▸ Subtract the "non service availability" hours from the "total service availability" hours; to obtain the percentage available, divide the result by the "total service availability" hours.
4. **Mean Time to Repair (MTTR)** – Mean average of the time to restore service on a trouble call (from the time the ILEC-provider receives a trouble call until the service is restored).
5. **Standard Deviation of the Time to Repair (MTTR)** -- The standard deviation of the mean average of the time to restore service on a trouble call (from the time the ILEC-provider receives a trouble call until the service is restored).
6. **Out of Service - Cleared >4 Hours (Percentage)** -- The percentage of outages which took longer than 4 hours to clear.

CODE ACTIVATION PERFORMANCE MEASUREMENTS

1. **Code Activation Performance (Actual)** -- The accuracy of opening CLEC NXX codes in all appropriate ILEC central offices after notification in LERG.
2. **Code Assignment Interval** -- The number of days between the date the CLEC requests a new code from the code administrator (when the code administrator is the ILEC) to the date the code is assigned to the CLEC.

DATA ENTRY PERFORMANCE MEASUREMENTS

1. **Mean Time to Enter Data (Actual)** -- The mean average of the total number of days that a ILEC *actually* took to enter data during the reporting period.
2. **Error Rate for Data Entries** -- The number of times that incorrect data is entered divided by the total number of entries during the reporting period.

CALL BLOCKING BETWEEN NETWORKS

1. **Percent Calls Blocked** -- The total number of calls blocked from an ILEC network completing to a CLEC network due to insufficient trunking as a percentage of all call attempts. This would be compared to call blockage percentages on calls completely in the ILEC network.

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Model Regulatory Procedures for The Enforcement of Interconnection Agreements

November 1997

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Enforcement of Interconnection Agreements

Enforcement of Interconnection Agreements between incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) is the province of the state regulatory agencies according to the Eighth Circuit Court of Appeals.[1] State regulators must exercise this responsibility expeditiously to further the public interest in having a competitive choice among local telecommunications carriers. The critical need for speedy action was underscored earlier this year by the Iowa Utilities Board, the first state public utility commission (PUC) to impose civil penalties on a recalcitrant ILEC (U. S. West):

> "The timely implementation of the interconnection agreement ... is a matter of highest public policy importance under Iowa code ..., and under the Federal Telecommunications Act of 1996. It is essential to the development of local service competition that U. S. West comply with the implementation schedule set by the board."[2]

Moreover, states may not erect or maintain barriers to entry in the local telecommunications market, and cumbersome regulatory processes that themselves delay implementation of Interconnection Agreements certainly constitute a barrier to entry, because they favor incumbents.[3]

With few exceptions, 100 percent of local exchange service customers still take ILEC service. Thus ILECs have a strong market incentive to delay implementation of Interconnection Agreements because delay may accomplish four ILEC objectives: it keeps customers from selecting a CLEC;

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[1] Iowa Utilities Board v. FCC, 120 F. 3d 753 (July 18, 1997).

[2] Order Finding Continuing Violation and Levying Civil Penalties. State of Iowa, Department of Commerce, Utilities Board. Docket No. AIA-96-1 (ARB-96-1) In Re: AT&T Communications of the Midwest, Inc., and U S West Communications, Inc. April 4, 1997.

[3] 47 U.S.C. § 253 (a).

it can limit CLEC revenues; it drives up CLEC regulatory costs; and it forces CLECs to divert resources away from investment in competitive infrastructure in order to participate in dispute resolution processes.

ILECs may seek to evade their Interconnection Agreement obligations in different ways. One way is to "reinterpret" the terms of the agreement, for example, saying they did not "intend" a specific definition when they signed the agreement. Another way is to declare a dispute over facts, such as traffic volumes, to create a "billing dispute." So long as a "billing dispute" remains unresolved, the ILEC can avoid paying a CLEC. A third way is to experience "technical difficulties" of various kinds to "excuse" performance that impairs CLECs reputations. A fourth way is to claim that CLECs have failed to provide needed information to enable ILECs to meet their obligation to provide interconnection, collocation, or access to unbundled network elements. Neither these nor any other attempts to delay interconnection and CLEC access to unbundled elements is lawful, but already, it is clear that some ILECs are more than willing to risk having their actions declared impermissible and even to risk financial penalties, in order to frustrate and delay local exchange competition for as long as possible.

Unfortunately, the requirement and opportunity to enforce Interconnection Agreements find some state regulatory agencies totally unprepared.[4] Understandably, many state regulatory agencies are not experienced in what is, in essence, quasi-judicial contract enforcement. State administrative procedures, established by state legislatures to enable state regulators to protect ratepayers from monopoly abuse, are not designed to adjudicate contract disputes between businesses who are interdependent rivals. Thus new, focussed, and streamlined state regulatory procedures are needed to permit **swift enforcement of Interconnection Agreements as contracts.**

Enforcement of Interconnection Agreements is very different from traditional regulatory processes.

[4] Notable exceptions may be Iowa, New York and Maryland, all of which acted swiftly in dealing with Bell Operating Company attempts to avoid obligations under specific interconnection agreements.

Regulatory proceedings, especially rate cases but also service quality enforcement and other types of proceedings, accustom Commissions to "cut the baby in half" solutions -- that is, to render a decision that balances the interests of two parties (usually telecommunications service providers and consumers) more or less equally. Enforcement of Interconnection Agreements demands a completely different decision criterion. The Commission must decide what the Agreement said, how parties' actions pursuant to the disputed portions of the Agreement reflect the intent of the parties in meeting the requirements of the Act, and whether the actions taken by the parties give effect to that intent. Enforcement of Interconnection Agreements rarely should result in a "compromise" as in a traditional regulatory proceeding, but rather in most cases should result in a finding for or against the complainant, as in a traditional contract dispute. **Because in approving the Agreement initially the Commission has already found its terms to be nondiscriminatory and in the public interest, the public interest can only be served by enforcing the agreement as written.**

Of course it is self evident that the Commission must not during enforcement permit either party to re-litigate the Interconnection Agreement itself, by arguing that circumstances have changed or otherwise. Enforcement must proceed as in interpretation of a contract, with the added consideration that the Interconnection Agreement is a special type of contract that has already been found to serve a public purpose and must be enforced so as to actually accomplish the objectives of the Telecommunications Act of 1996.

Resolving a dispute between businesses about business practices pursuant to an Interconnection Agreement should not involve any parties other than those businesses. This would simply prolong the proceeding, give rise to attempted intervention by parties with no financial or operational interest in the outcome of the dispute, and create yet another incentive for the ILEC to delay resolution and to actually create sham disputes.

Just as many normal commercial contract disputes are resolved through binding arbitration, enforcing some Interconnection Agreements could be more **akin to commercial arbitration** than

to regulatory functions. Thus it is also necessary for PUCs to consider whether particular personnel experienced in regulatory processes have the background and training to effectively conduct enforcement proceedings. If a hearing examiner's or administrative law judge's (or Commissioner's) knowledge of relevant contract law is limited, and/or if the person has had no experience with arbitration, a Commission may decide to assign an enforcement proceeding to a commercial arbitrator. In the interest of time, too, it might be appropriate for a Commission to appoint an outside arbitrator to conduct enforcement proceedings. At the very least, Commissioners should if needed provide the staffer or Commissioner acting as hearing examiner with special training as an arbitrator.[5]

TCG offers the following Model Regulatory Procedures for the Enforcement of Interconnection Agreements. In some cases amendments to the state administrative procedures' laws may be necessary to permit the regulatory agencies to adopt streamlined procedures. The Model, with appropriate rewording, could also serve as Model Legislation.[6]

[5] TCG believes that ideally the parties should be free to agree to have their dispute resolved by a commercial arbitrator, rather than submit it to a PUC.

[6] The model draws heavily on Illinois SB 700 Amending the Public Utilities Act 220 ILCS 5/13.

MODEL REGULATORY PROCEDURES FOR SWIFT ENFORCEMENT OF INTERCONNECTION AGREEMENTS

Purpose

The federal Telecommunications Act of 1996 established the national goal of opening all telecommunications service markets to competition and accords to the states the responsibility to establish and enforce policies necessary to attain that goal.

It is in the immediate interest of the People of the [state] for the State to exercise its responsibilities and rights within the new federal statutory framework to ensure that all the benefits of competition in all telecommunications service markets are realized as effectively as possible.

Protection of the public interest requires changes in the regulation of telecommunications carriers and services to ensure, to the maximum feasible extent, the reasonable and timely development of effective competition in all telecommunications service markets.

It is necessary and appropriate to establish rules to encourage and ensure orderly transition in the development of markets for all telecommunications services and to promote effective and sustained competition in all telecommunications markets.

For the purpose of the adoption of such rules, telecommunications service" means [existing definition] and also includes interconnection arrangements and services and access to unbundled network elements of incumbent local exchange carriers pursuant to the Telecommunications Act of 1996.

Adoption and Authority

The [State PUC] herewith adopts enforcement rules and procedures that ensure that interconnection

arrangements entered into by carriers and approved by the [PUC] are implemented and enforced. The Commission has general rulemaking authority to make rules necessary to enforce these rules and procedures consistent with the Telecommunications Act of 1996 and [applicable state statute].

Rules

1. PROHIBITED ACTIONS OF TELECOMMUNICATIONS CARRIERS. A telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market. The following prohibited actions are considered *per se* impediments to the development of competition:

   a. Refusing or delaying interconnections or providing inferior connection to another telecommunications carrier;

   b. impairing the speed, quality or efficiency of services used by another telecommunications carrier;

   c. denying a request of another provider of telecommunications for information regarding the technical design and features, geographic coverage, information necessary for the design of equipment, and traffic capabilities of the local exchange network, except in the case of proprietary information, in which case the disclosure of such propriety information may be required, subject to proprietary agreement or protective order;

   d. delaying access in connecting another telecommunications carrier to the local exchange network whose product or service requires novel or specialized access requirements;

e. refusing or delaying access by any person to another telecommunications carrier, including but not limited to preventing the access by a tenant or occupant of a building to a carrier of his or her choice, or acquiescing to such prevention;

f. acting, or failing to act, in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers;

g. violating the terms of or unreasonably delaying implementation of an Interconnection Agreement entered into pursuant to Section 252 of the federal Telecommunications Act of 1996 in a manner that unreasonably delays or impedes the availability of telecommunications services to consumers;

h. other actions that impede competition.

2. ENFORCEMENT. The Commission shall enforce the rules set forth in Section 1. Unless the Commission and the parties otherwise mutually agree, the Commission shall use the procedures set forth in this Section for the review of complaints relating to violations of Section 1 or Interconnection Agreements.

3. COMPLAINT RESOLUTION BY CARRIERS. A carrier having a complaint regarding an action prohibited by Section 1 or an Interconnection Agreement with another carrier must notify the respondent of the alleged violation in writing. A complainant must either (a) exhaust the specific dispute resolution process provided for in its Interconnection Agreement with the respondent, or (b) offer the respondent 48 hours to correct the situation prior to filing any complaint under this Section. Provision of notice or the opportunity to correct the situation creates a rebuttable presumption of knowledge under either action.

4. COMPLAINT PROCESS. If no resolution is reached under 3(a) or 3(b), the complainant may file with the Commission and initiate the complaint process.

a. the complaint shall be filed with the [appropriate officer] of the Commission and shall be served in hand upon the respondents;

b. at any time following the filing of the complaint, parties may commence reasonable discovery. Parties must respond to the discovery request within fourteen days after the date the request is made;

c. responsive pleading to the complaint must be filed with the Commission within seven days after the date the complaint is filed;

d. a determination of grounds for the complaint and, if necessary, a directive for legal notice will be made within three days after the date the response is filed;

e. a pre-hearing conference before the Commission's designated hearing examiner or arbitrator will be held within fourteen days after the date the complaint is filed;

f. the hearing shall commence within thirty days after the date the complaint is filed;

g. the hearing examiner [arbitrator] shall issue its decision within sixty days after the date the complaint is filed;

h. the hearing examiner's [arbitrator's] decision shall be considered a final order ten days after the date the decision is issued, unless the Commission issues its own final order within ten days after the date the hearing examiner or arbiter issued its decision.

5. REQUEST FOR EMERGENCY RELIEF. If the alleged violation has substantial adverse effect on the ability of the complainant to provide service to customers, the complainant may include in its complaint a request for emergency relief. The Commission shall address the request in accordance with the following:

   a. the Commission, acting through its designated hearing examiner [arbitrator], shall issue a decision regarding the request within two business days of the date the complaint is filed;

   b. the decision of the hearing examiner [arbitrator] shall be considered an order unless the Commission itself issues its own order within two calendar days of the date the hearing examiner's [arbitrator's] order.

6. INJUNCTIVE RELIEF. If the Commission believes that there is an imminent threat to competition or to other aspects of the public interest, the Commission may, notwithstanding any other provision of this rule, seek temporary, preliminary, or permanent injunctive relief from a court of relevant jurisdiction either prior to or after the hearing.

7. PENALTIES. Upon completion of the hearing and a determination that all or any portion of Section 1 of the Commission's rules have been violated, the Commission shall impose penalties on the telecommunications carrier(s) that has (have) violated the rules.

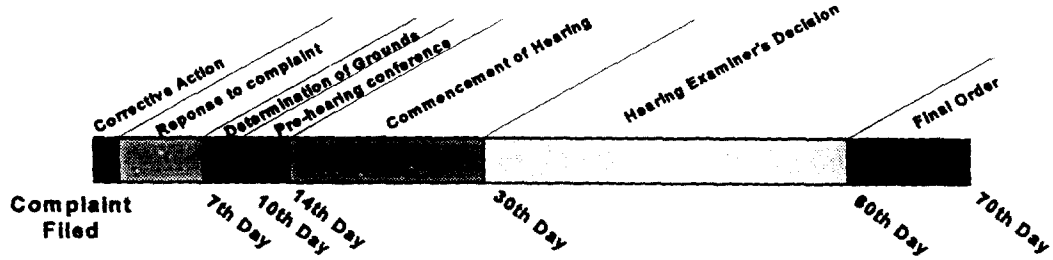
   a. The party or parties responsible for the violation shall each pay the complainant an amount equal to three times the complainant's lost revenue and added costs resulting from the violation(s), or $30,000 per violation, whichever is greater;

   b. each day that the violator was in violation of the rule shall be considered a separate violation;

c. such penalties shall be in addition to any liquidated damages provided for in the interconnection agreement which is the subject of the complaint.

8. RECOVERY OF THE COMMISSION'S COSTS. The Commission shall assess the losing party or parties for the Commission's costs of investigating and conducting the complaint proceeding. If parties settle before a final decision, commission costs are divided equally, unless parties agree otherwise in settlement.

Recommended Response Times for Swift Enforcement



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